TOWN OF ASHLAND

Direct Testimony of Dexter Blois

DTE 02-46

Q: Please state your name and business address.

A: My name is Dexter Blois. I am currently retired. My home address is 2 Old Nourse Street, Westborough, Massachusetts 01581-3510.

Q: By whom were you most recently employed and in what capacity?

A: I was Town Manager for Ashland for 9 ½ years. In that capacity, I was responsible for overseeing an operational budget of $36,000,000 including the payment of invoices for sewerage usage as well as negotiating all modifications to all arrangements between Ashland and Framingham.

Q: Please briefly summarize your educational background and business experience.

A: I obtained an A.S. from Massachusetts Bay Community College (Wellesley, Massachusetts) (major in fire administration), a B.S. from the University of Connecticut (Storrs, Connecticut) (major in pharmacy) and an M.P.A. from Clark University (Worcester, Massachusetts) (major in public administration). I currently hold an active pharmacist license in Massachusetts and have held a pharmacist license in New Hampshire.

Chronologically, my work and education experience is as follows: In 1965 I obtained a B.S in pharmacy from the University of Connecticut in Storrs, Connecticut. From 1965 until 1966, I worked as a pharmacy research technician for the Ortho Pharmaceutical Corporation in Raritan, New Jersey. As part of duties, I was responsible for manufacturing and testing dosage forms of investigational drugs.

From 1966 until 1980, I worked as pharmacist and manager of Westboro Drug, Inc. in Westborough, Massachusetts. My responsibilities included filling prescriptions, ordering stock, accounting , payroll, tax preparation, accounts payable and accounts receivable. In 1980, I graduated from Massachusetts Bay Community College in Wellesley, Massachusetts with an A.S. in fire administration. In 1982, I graduated from Clark University in Worcester, Massachusetts with an M.P.A. (Masters in Public Administration). From 1980 until 1987, I worked as Chief Administrative Officer for the town of Westborough. At that time, Westborough had a population of 14,000. As part of my responsibilities, I developed and managed an operating budget of $25,000,000. My other responsibilities as Chief Administrative Officer for Westborough mirror those that I had as Chief Administrative Officer for Ashland more recently and as I will detail later. From 1987-1988, I worked as a staff pharmacist for Brooks Pharmacy in Wayland, Massachusetts. From 1988 until 1993 I accepted the position of Chief Administrative Officer for the town of Sutton, Massachusetts. At that time, Sutton had a population of 7,500. As part of my responsibilities, I developed and managed an operating budget of $18,000,000. My other responsibilities as Chief Administrative Officer mirror those that I had as Chief Administrative Officer for Ashland more recently as I will detail later.

Q: Please describe your responsibilities when you acted as Town Manager for Ashland.

A: From 1993 until 2002, I worked as Chief Administrative Officer, Chief Financial Officer, Chief Procurement Officer and Personnel Director for the town of Ashland.

Ashland has a population of 15,000. I was responsible for the day-to-day administration and operation of the town. My responsibilities included but were not limited to hiring and firing of municipal employees (other than school employees), preparation and oversight of the annual town budget (most recently $36,000,000), negotiation and execution of all labor contracts and resolution of union grievances, oversight of all town property (except schools), including maintenance and rental, negotiation, supervision and oversight of all contracts with town including service, supply and engineering contracts, responsible for designer selection under M.G.L. c. 30, §39 and M.G.L. c. 149, §44 et al. I had regular communications with Ashland's Department of Public Works and was regularly apprised and informed of any developments, repairs, improvements and modifications made to Ashland's public works systems and any connections of these systems to Framingham's systems.

Q: Are you familiar with the InterMunicipal Agreement dated December 9, 1963 (the "IMA") governing Ashland's use of Framingham's sewerage facilities which was signed by representatives of both Ashland and Framingham?

A: Yes.

Q: What did the IMA provide?

A: The IMA was an agreement between Ashland and Framingham which detailed Ashland's usage of certain sewer trunk-lines of Framingham which were to be used for the transportation of Ashland's sewerage to the sewers of the Metropolitan District Commission (which is now the Massachusetts Water Resources Authority ("MWRA")).

Specifically, the IMA permitted Ashland to connect its sewerage system to the Framingham system at the Farm Pond intercepting sewer. Ashland's use of the Framingham system was to be limited to a maximum rate of discharge of 2.0 million gallons per day (or 1400 gallons per minute) of Ashland sewerage with the exception that momentary discharge rates are not to exceed 2.5 million gallons per day (or 1750 gallons per minute for period not in excess of five minutes.

In consideration of this usage, Ashland is to pay Framingham an annual charge of $3,000 for the usage of up to one million gallons of the average daily flow of Ashland sewerage. If Ashland's sewerage exceeds one million gallons per day, Ashland agrees compensate Framingham in addition to the $3,000.00 annual charge mentioned above, an additional charge of $2,000 for an additional one million gallons of average daily flow.

Q: Does the IMA permit Ashland to connect to Framingham's sewerage system at any other points?

A: Yes. The IMA permits Ashland to connect to the Framingham sewerage system at the 12" sewer located at the Boston and Albany Railroad at its junction with Bates Road. Ashland's usage at this connection is limited and restricted to a maximum rate of discharge of 200 gallons per minute of Ashland sewerage. Ashland agreed to pay Framingham $2,500 in exchange for this usage.

Q: Did the IMA permit the parties to review and renegotiate these charges and rates?

A: Yes. Per the IMA, the parties agreed that the annual charges and rates of discharge specified in the agreement were to be reviewable five years from the date of this

specified in the agreement were to be reviewable five years from the date of this agreement and at subsequent five year intervals.

Q: When did Framingham first raise the issue of reviewing the charges for Ashland's usage of those specific portions of Framingham's sewerage system?

A: As I will detail later, it was not until Framingham's town meeting in May 2000 that Framingham first raised this issue.

Q: Was 2000 one of the years in which the IMA permitted Framingham and Ashland to review the charges and rates for Ashland's usage?

A: No. The earliest time period would have been 1998.

Q: Did the IMA specify how it could be terminated?

A: Yes. Section 5 of the IMA stated that it could terminate "when and if and at such time as Town of Ashland shall directly enter the Metropolitan District Commission system (it is now the MWRA as I stated above) at which time the obligations of either party hereunder shall terminate."

Q: Has Ashland entered the MWRA system directly?

A: No.

Q: Has Framingham produced to the DTE any documents which were exchanged between Ashland and Framingham prior to December 9, 1998 pertaining to "annual charges and rates of discharge" to be applied after December 9, 1998?

A: None that I am aware of.

Q: When did Framingham first discuss modifying the annual charges and rates of discharge?

A: It was not until May 2000 that Framingham discussed modifying the amount that Ashland would have to compensate Framingham for Ashland's usage of

Framingham's sewerage system. Beginning in 1998, however, Ashland and Framingham met on numerous occasions in good faith to discuss possible revisions with the intent to increase the gallon limit of Ashland's sewerage discharge. As Framingham suffered from significant personnel turnover from 1998 to present, Framingham apparently was not able to devote sufficient resources toward resolving the gallon increase issue nevermind initiating discussions about revisions to the sewerage charges and rates issue. In fact, Ashland was informed that since 1998 Framingham has had five Department of Public Works managers (John McMahon, William Skinner (who at one point was also Water and Sewer Superintendent), John Bertorelli, Mark Call and Peter Sellers). As a result, negotiations between Framingham and Ashland regarding increases to the gallon limit of Ashland's sewerage discharge were hampered throughout this period. Further, in July 1999, while Ashland and Framingham were in the process of forwarding a negotiated agreement on gallon discharge increases to the Framingham Board of Selectmen for their approval, the Town Manager, Russell Marcoux, left his position. Thus, negotiations on the gallon limit again stalled due to lack of attention on the part of Framingham until May 2000 when Framingham's new Town Manager, George King, initiated discussions about revisions to the sewerage rate and charges. Framingham did not raise the issue of annual charges for review with Ashland until 2000.

Q: When was the first time that Framingham began any discussions specifically about modifying the IMA regarding annual rates and charges of discharge?

A: In May 2000, for the first time since the inception of the IMA in 1963, Framingham

formally raised the issue of IMA's annual charges and rates at a town meeting. At no time prior to this date did Framingham discuss any desire to negotiate any revisions to Ashland's sewerage charges and rates. In fact, there is a Framingham town meeting document, dated December 2000, which states "[the IMA] apparently never has been reviewed in a public or formal matter . . . Presently, we are not in one of the five-year intervals; but we have been approached by Ashland to amend the agreement as they would like to increase their flow." This same document also indicated that these negotiations were "on hold." Furthermore, this document stated that Framingham's public works department was planning on hiring an engineering firm to estimate a fair annual payment from Ashland and that when that estimate became available, Framingham would "begin negotiations with Ashland for an increased fee."

Q: Were the charges and rates of discharge specified in the IMA eligible for review in 2000 when Framingham first requested that they be reviewed?

A: No. Because of the five year negotiation requirement of the IMA, Framingham missed its opportunity in 1998 to negotiate annual charges and rates of discharge and should not technically be permitted to negotiate such changes until 2003.

Q: When did Framingham retain its consultant, SEA Consultants ("SEA")?

A: I am informed that Framingham retained SEA in May 2001.

Q: For what purpose was SEA retained?

A: I believe SEA was retained to estimate the fair annual payment that Ashland should make. SEA generated a Sewer Rate Assessment Study in May 2001 ("SEA's Report").

Q: What did SEA's Report state?

A: SEA attempted to determine what was Ashland's "fair and equitable proportionate share of the actual cost of the maintenance of the system" ("Ashland Cost") as required by the IMA. SEA determined that this should be measured by taking the Ashland flow of sewerage as compared to the total Framingham sewer system flow multiplied by the actual costs of maintaining the Framingham system less capital expenditures, MWRA fees and pumping station costs. SEA's formula as detailed below yielded $203,000 as Ashland's Cost:

Ashland Flow = (0.77)
_____ X Framingham O& M Costs ($2,316,814)
(Framingham Flow (8.023)
+ Ashland Flow (0.77) =
Total Flow= 8.793)

Q: Does Ashland agree with Framingham's formula as proposed by SEA?

A: No. Ashland disputes the premise for Framingham's calculations and Ashland disputes Framingham's ultimate determination that Ashland's "fair and equitable proportionate share of the actual cost of the maintenance of the system" that Ashland uses ("Ashland's Cost) should be $203,000 or higher. Framingham bases its formula above solely on a percentage of sewerage flow through the entire Framingham system. However, Ashland does not use the entire Framingham system.

Q: What parts of the Framingham system does Ashland use?

A: Ashland utilizes from Arthur Street to Beaver Street, Beaver Street to Waverley Street, Waverley Street to the Farm Pond Connection, Beaver Street to Herbert Street, Herbert Street to Eames Street and Eames Street to Guild Road. I will refer to these

Herbert Street to Eames Street and Eames Street to Guild Road. I will refer to these as the "Shared Sewer Pipelines."

Q: So does Ashland utilize Framingham's entire sewerage system?

A: No. Ashland only utilizes these few Shared Sewer Pipelines mentioned above.

Q: Whose sewerage flows through the Shared Sewer Pipelines?

A: Both Ashland's and Framingham's sewerage flows through these Shared Sewer Pipelines.

Q: Does Ashland's and Framingham's sewerage that flows through the Shared Sewer Pipelines flow directly to the MWRA?

A: Yes.

Q: Who owns and maintains the connection from the Brackett Road pump station to the Bates Road connection with Framingham and the connection from the Chestnut Street pump station to the Farm Pond Interceptor in Framingham?

A: Ashland.

Q: Does Ashland simply utilize Framingham's pipes in these segments or does Ashland utilize pump stations and other infrastructure?

A: Ashland simply shares the pipe segments and flows by gravity, along with Framingham's sewerage to the MWRA. Ashland does not utilize any pump stations or other infrastructure which is part of the Framingham system.

Q: When did Ashland retain Vollmer Associates ("Vollmer")? For what purpose?

A: Ashland retained Vollmer in November 2001 to evaluate SEA's May 2001 Report.

Q: What did Vollmer determine?

A: Vollmer stated that Ashland's proportionate share of operation and maintenance (O&M) cost should be based on only the sewers that it shares (Farm Pond Interceptor,

(O&M) cost should be based on only the sewers that it shares (Farm Pond Interceptor, Bates Road Sewer and Beaver Dam Interceptor). In its report, Vollmer estimated that its proportionate share of the O&M cost for the shared sewers was approximately $16,858.00. This is based on the product of the portion of the Framingham system that Ashland uses (3.04%), Ashland's portion of Interbasin Transfer Allocation compared to the total of Framingham's plus Ashland's Interbasin Transfer Allocation (11.19%) and the operating budget for the gravity sewer system ($4,957,656). Vollmer utilized the $4,957,656 figure provided by Framingham's Department of Public Works to Ashland in August and October 1998. Vollmer later adjusted its calculations by using the O&M costs provided by SEA in table 4.1 of its 2001 report to Framingham and utilized the O&M costs of $2,316, 814 provided therein.

Q: How did Vollmer determine the formula you just described?

A: The formula Vollmer used was as follows:

> **(3.04%) (the percentage of total inch-miles of sewerage pipeline that are actually used by Ashland) X (11.19%) (the ratio of Ashland's Interbasin Transfer Allocation (3.20 MGD) / Total of Ashland's Interbasin Transfer Allocation (3.2 MGD) + Framingham's InterBasin Transfer Allocation (25.39)) X Framingham's O&M costs = Ashland's proportionate share of operation and maintenance (O&M) cost.**

This formula was derived from Framingham's Department of Public Works' manager and also Water and Sewer Superintendent and shared with Ashland in faxes dated August 6, 1998 and October 21, 1998.

Q: How does Ashland propose that Ashland's Cost (its "fair and equitable proportionate share of the actual cost of the maintenance of the system") be calculated?

A: Ashland contends that Ashland's Cost should be based on proportionate flow through those sewer pipes actually used and not simply on percentage of sewerage flow as if Ashland were using the entire Framingham system. Ashland should not be responsible for the operation and maintenance of Framingham's entire system. Based on this method, Ashland's Cost determined by this formula yields an Ashland Cost of $7,881.00 for fiscal year 2001. This is the same formula proposed by Vollmer and which, as I have mentioned, was originally provided to Ashland in 1998 by Framingham:

Percentage of Ashland's Usage of Inches/Miles of Framingham Sewerage Pipe (3.04%) X

<u>Ratio of Ashland's InterBasin Transfer allocation (3.20 MGD)</u> X Framingham's (28.59 MGD)

Framingham's O&M cost ($2,316,814)

Unlike SEA's formula which is based on percentage of flow and yielded an Ashland Cost of $203,000, Ashland's formula based on shared sewer use yields an Ashland Cost of $7,881.00.

Q: Why is this method of calculation is more appropriate than that determined by Framingham?

A: Ashland's proposed formula is more appropriate because it is more accurate. Framingham and Ashland agreed to the cost of Ashland's usage of Framingham's sewerage system on a blanket basis. Framingham did not seek to calculate and

charge the cost of usage of its system to each of Ashland's citizens. Rather, it is understood that Ashland's usage of Framingham's system was at a cost which Framingham knew that Ashland would then bill out to its citizens.

Further, Framingham should not be permitted to treat Ashland just like a Framingham citizen who is billed at a standard rate which is applied to all Framingham citizens regardless of how much or how little pipeline and infrastructure each citizen actually uses. Unlike with Framingham citizens, it is not too onerous to determine Ashland's actual pipeline usage and actual proportionate flow through those shared pipeline segments. By using actual inch-miles of sewer and a proportion of actual Ashland flow to Framingham flow through those specific shared segments, a more accurate measurement can be obtained.

Q. Do you consider Ashland to be a wholesale customer or a retailer customer?

A: A wholesale customer.

Q: What is the significance of the ratio of Ashland's InterBasin Transfer Allocation ("ITA") to Framingham's ITA?

A: As I have already stated, Ashland should be only responsible for the cost of operating and maintaining those 85.89 inch/miles of sewer pipe segments that it actually uses. Further, Ashland not be responsible for entire cost to operate and maintain these shared sewer pipe segments because these are shared sewer pipe segments. Both Ashland's and Framingham's sewerage flows through these shared sewer pipe segments. Ashland should only be responsible for the cost of operating and maintaining the shared sewer pipe segments with Ashland's proportionate sewerage

flow through these pipes taken into account as well. Unfortunately, to date, we do not have measurements of Ashland's and Framingham's respective percentage of flow through these shared sewer pipe segments. As an alternative, Ashland proposed using the ratio for the maximum allowable flow indicated in its ITA (3.20 MGD) in comparison to the total of Framingham's and Ashland's ITA (28.59).

Q: Per the IMA, how much did Framingham invoice Ashland after the IMA was signed in 1963?

A: In accordance with the IMA, Framingham invoiced Ashland annually from 1963 to 2000 in the amount of $5,500.

Q: Did Ashland pay each and every of these invoices?

A: Yes.

Q: When did Framingham first bill Ashland for any amount other than $5,500 per year?

A: Framingham billed Ashland in the amount of $101,500 for the six months of usage between January 1, 2001 and June 30, 2001. On December 12, 2001, Framingham sent Ashland a bill in the amount of $101,500 for the six months of usage from June 30, 2001 to December 12, 2001. On June 12, 2002, Framingham sent Ashland a bill in the amount of $101,500 for six months of usage from January 2002 and ending on June 30, 2002. On December 17, 2002, Framingham sent Ashland a bill in the amount of $101,500 for six months of usage from June 2002 until December 2002. Per above, because Ashland disputed these invoices, Ashland compensated Framingham $2,750 in payment for each invoice.

Framingham $2,750 in payment for each invoice.

Q: Do you believe that Ashland should be responsible for future capital costs?

A: I believe that Ashland should be responsible for a fair and equitable proportionate share of the costs of repairs as well as capital improvements to those parts of the system that Ashland directly utilizes but only to the extent that such capital improvements are a direct and current benefit to Ashland. For example, Ashland should not have to pay for capital costs due to Framingham's decision to increase the size of the pipeline due to changes in Framingham's flow. This statement is conditioned upon Ashland having input into and veto power over all such capital improvement decisions. Ashland proposes that such repairs and capital improvements should be calculated based on the cost for such repairs and capital improvements multiplied by the ratio of Ashland's average daily flow through the directly affected pipe segment to Framingham's average daily flow through the directly affected pipe segment. Of course, Ashland should not be responsible for payment of cost to Framingham where Framingham can or has obtained governmental funding for the cost of repair and/or capital improvements.

Q: Are you aware of any actual harm caused to Framingham's sewerage system caused by the emission of hydrogen sulfide into Framingham's sewerage system?

A: No.

Q: Are you aware as to whether the IMA addresses the exclusion of hydrogen sulfide or any other natural substances contained in sewerage material?

A: The IMA does not exclude sulfide of any other natural substances contained in sewerage material.

sewerage material.

Q: Does the IMA address the emission of hydrogen sulfide contained in sewerage material?

A: The IMA states that Ashland agreed to indemnify and hold harmless Framingham from "any and all increased charges levied against the Town of Framingham, if any, by the Metropolitan District Commission (now the MWRA). . . ."

Q: Are you aware of any increased charges levied against Framingham by the MWRA as a result of Framingham's permitting Ashland to use its sewer trunk-lines?

A: No. In fact, a MetroWest Daily article dated November 21, 2002 specifically stated "State regulators have agreed not to levy stiff fine against the town for exceeding sulfide levels in sewer system, potentially saving the town thousands over the next several years. In an agreement between the town [of Framingham] and the Massachusetts Water Resources Authority, the state agreed to hold back on the fines, provided the town make a good faith effort to solve the problem."